

Mr. A. G. Meck, President
Getty Pipe Company
660 Madison Avenue
New York, NY 10021

Dear Mr. Meck:

Thank you for your letter of May 14, 1974, asking whether the 12 inches of additional cover required for operation of a pipeline under 49 CFR 195.210 applies where a carrier permits construction of a private dwelling on its right-of-way within 50 feet of an existing pipeline.

Section 195.210(a) requires that a "Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings" Section 195.210(b) states: "No pipeline may be located within 50 feet of any private dwelling ... unless it is provided with at least 12 inches of cover in addition to that prescribed in ?195.248." As provided in ?195.200, these sections are applicable "... for constructing new pipeline systems with steel pipe, and for relocating, replacing, or otherwise changing existing pipeline systems that are constructed with steel pipe.

A pipeline carrier's action allowing a change in either a right-of-way or in the distance between its pipeline and adjacent structure is an action changing an existing pipeline system within the meaning of ?195.200. Therefore, an action by the pipeline operator that would permit the construction within 50 feet of an existing pipeline serves to effectively change the location of that pipeline relative to adjacent structures. The pipeline operator would, then, pursuant to ?195.210(b), have to provide 12 inches of pipeline cover in addition to that required by ?195.248(a) unless the exception provided in ?195.248(b) is applicable.

We trust this adequately responds to your inquiry.

Sincerely,

/signed/

Joseph C. Caldwell
Director
Office of Pipeline Safety

May 17, 1974

Department of Transportation
Hazardous Materials
Regulations Board
Washington, D. C. 20590

Re: Getty Oil Pipeline
Piscataway Township, N.J.

Dear Sirs:

I have a builder-client who has applied for a five lot land subdivision in Piscataway Township, New Jersey, which will enable him to create five one-family residential home building lots. Two of the proposed lots are crossed in part by the Getty Oil Company pipeline. The proposed location of the homes to be constructed on each of those two lots will be from 20 to 25 feet away from the existing pipeline.

When the Getty Oil Company heard of the proposed subdivision, they raised a question before the Piscataway Township Planning Board, concerning title 49, Chapter 1, Sub Part D, Section 195.210, Sub Paragraph B, which sets forth that no pipe line may be located within 50 feet of any private dwelling unless it is provided with at least twelve inches of cover in addition to that prescribed in Section 195.248. Section 195.248, Paragraph A, sets forth that the cover for residential areas should be 36 inches. Accordingly, it would appear that 48 inches of cover would be required for the location of a pipe line within 50 feet of any private dwelling. However, on page 3 of Amendments to Title 49 in part 195, it would appear that only 24 inches of cover is necessary instead of 48 inches.

The purpose of this letter is to request an answer or ruling, if at all possible, on the following three questions:

1. Does Getty Oil Company have any right to insist that the builder do anything in regard to their existing pipe line, including creating or making any additional cover to same? My interpretation of Title 49 is that it is meant for any pipe line company which is presently or about to lay pipe line in the area of already existing residential dwellings, and it does not have a

reverse application so as to affect, in any way, a private party who desires to construct a residential home on a lot upon which the pipe line crosses by way of easement. In other words, does Getty have any legal right to raise a question before the Piscataway Township, N.J. Planning and Sub-division Board, or have they no legal standing whatsoever on the basis of my interpretation of the legislation.

2. Since the act is silent on what is meant by the word "cover", is it reasonable to assume that normal earth cover is what is meant.

3. Also, the original act seems to require twelve inches over 36 inches but the later amendment seems to reduce the requirement to a total of 24 inches of cover. Would you kindly advise me as to your interpretation of this section.

My client has been held up for several months due to the fact that the Piscataway Township Planning Board cannot properly evaluate the above questions and Title 49, and accordingly, it is afraid to grant my client subdivision approval although it is sympathetic to his request, and any other questions have been solved to the satisfaction of the said Planning Board. This is the first time Getty Oil has ever raised this question with the Piscataway Planning Board although their oil pipe line easement extends for several miles across the township and the Planning Board attorney who is very experienced and capable has not been able to find any other instances or cases which could help solve the above problems.

Accordingly, I would very much appreciate some immediate help in this problem by way of your opinions and answers to the above questions.

Thanking you in advance for your kind attention to this matter, and awaiting your further advises, I remain,

Very truly yours,

Raymond S. Miller